IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 12683 of 2007(I)

OS.121/2001 of PRL.MUNSIFF COURT, KOZHIKODE-II
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PETITIONER:

PATHUMMAYI, W/O.ASSAINAR,
PUTHIYAPURAYIL, PALLIPARAMBU VEEDU,
AGED 55 YEARS, P.O.NALLALAM, NALLALAM AMSOM
DESOM, KOZHIKODE TALUK.

BY ADV. SRI.M.G.ASHOKAN

RESPONDENTS:
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1. PARAMBIL MOOSAKOYA, S/O.MUHAMMED HAJI,
VADAKKOM PARAMBIL VEEDU, AGED 51 YEARS,
P.O.NALLALAM, NALLALAM AMSOM DESOM, KOZHIKODE
TALUK.

2. PARVATHY AMMA, D/O.KALLIANI AMMA,
AGED 73 YEARS, KOMANCHERI VEEDU,
P.O.NALLALAM, NALLALAM AMSOM DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.P.J.MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 12683/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE JUDGMENT IN OS NO. 121/2001 DT. 30/09/02 OF THE MUNSIFF COURT, KOZHIKODE-II.

EXT.P2. COPY OF THE AFFIDAVIT IN SUPPORT OF IA 5420/03 DT. 5/12/03 IN O.S 121/01.

EXT.P3. COPY OF THE AFFIDAVIT IN SUPPORT OF IA NO. 5419/03 DT. 5/12/03 IN OS NO. 121/2001.

EXT.P4. COPY OF THE COMMON ORDER DT. 5/2/2007 IN IA NO. 5419 AND IA 5420/03 IN O.S NO. 21/2001.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 12683 OF 2007

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Dated this the 8th day of October, 2007.

J U D G M E N T

This writ petition is filed challenging the order of the Munsiff, Kozhikode-II in I.A.Nos. 5419/03 and 5420/03. The said applications were filed for setting aside the exparte decree in O.S.121/01. It is averred that there was a settlement of dispute between the parties in the presence of the Panchayat President and a way has been given to the plaintiff and without disclosing the same and suppressing it before the Court the plaintiff has obtained an exparte decree and that the petitioner in the I.A. came to know about it only when she approached the Advocate for getting the documents. There was a delay of 430 days in filing the application for setting aside the exparte decree. Now, the main grievance of the writ petitioner is to the effect that the Court did not apply its mind at all and the Court had not given any cogent reasoning and therefore the order is to be interfered with. There is considerable force in the said

contention. Nobody has been examined. No evidence had been adduced and merely on the perusal of an affidavit the Court below has decided the matter. It is not proper. Therefore I set aside the order passed by the learned Munsiff and remit back the same to the same Court for fresh consideration leaving open all contentions of the parties and they are permitted to adduce evidence in support of their respective contentions. Parties are directed to appear before the Court below on 12.11.07.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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